



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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### **NR 115 Revision: Advisory Committee Meeting June 8, 2006 Holiday Inn Hotel & Convention Center, Stevens Point, Wisconsin DNR**

#### **PURPOSE:**

- Share statistics and summary of the public comments
- Introduce the idea of focus groups this summer to tweak some of the new policies in NR 115
- New concepts needing further attention – Introduce goals for mitigation and impervious surfaces
- Discuss meaning of the new timeline for the AC

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#### **Welcome and Review New Timeline**

**Russ Rasmussen**

Public hearing and comment process modeled on the Non-point source rule revisions (NR 151):

##### **I. Process:**

- Working groups or technical advisory committees focusing on individual topics
- Review outcomes to inform revision

##### **II. Timeline:**

- Summer: Will be difficult with people's summer travel schedules but goal to have one to four focus group meetings for the Impervious Surface and Mitigation standards
- Fall (Oct.): Review and revise rule according to focus group input
- Late Fall (Nov.): Hold third focus group on Implementation and Enforcement (in response to the County Code Admin statement that new rules "can't be done") using information from new Impervious surface and Mitigation ideas
- Winter (January): Advisory Comm. review of focus groups
- Summer 2007 (June): next public hearing

The technical advisory committees for focus groups will include both advisory committee members, along with other stakeholders and experts.

#### **Review Summary of public hearing comments**

**Toni Herkert**

Overall, public hearings were a positive experience.

Review main points from handout "Public Hearing Comment Survey" and explanation of how to interpret the findings: comments grouped by like-statements; all individual statements are available on the main database print-off (handed out at meeting and available on the Shoreland website).

Toni began to review summary materials, but ultimately decided to hit on some of the major points and let AC digest the bulk of the comments later as they prepare for their AC focus groups.

The form letter batch numbers were explained: grouped into batches within the database to indicate the repetition of a particular message from a particular group, but their importance carries the same weight as all other comments.

AC requested that copy of original form letters and some indication of which group submitted them be made available to the group. One copy will be posted on the Shoreland website.

### **Major points:**

#### **Definitions**

Like many issues the AC will need to iron out, the balance of flexibility and clarity within the new code needs to be established, as well as balancing private property and public resource rights. As for determining which definitions are required to be included in the code, the legislative clearinghouse will tell the Department of Natural Resources (Dept.) which definitions are required and the DNR will also add those definitions needed for clarity.

Jay: Confused about how the new revisions will be illustrated (differentiated from original NR 115 and first draft revisions).

Dept.: They will be highlighted in the next draft, however, the public won't be able to differentiate between the first and second revision. For the AC's benefit, a system will be created to differentiate between the two drafts.

Jay suggested underlining changes made after first public hearing (2006 Draft: old NR 115 + 2005 public hearing comments) and underlining-italicizing changes from the first to second draft (2005 public hearing comments + AC and focus group suggested revisions).

Earl says this process will be confusing for the public.

Dept.: DNR will try its best to mediate confusion, but some is expected due to the complexity of the process.

#### **Setbacks**

- Def of OHWM for Lake Michigan and Lake Superior
- 4 specific issues of support: greater setback, wetland setback, exempted structures, OHWM & wetland determinations
- Only 2 of 1227 comments opposed the 75 ft setback b/c too restrictive, but opposition didn't speak to setback averaging.

#### **Boathouse trend**

John: Bias in responses? Probably did not hear from those without boathouses.

Phil: Most would think the 75 foot setback ridiculous for boathouses.

Also, will we be able to pick out the **clear messages from the comments?**

Dept.: The Impervious surface and Mitigation focuses may very well cover the major issues people raised and for this reason they were chosen as new potential standards.

Nancy: People probably didn't go through entire code and "vote" for or against each individual point, so it may be difficult to draw meaning from what we (AC) got right or wrong in the revision.

Earl: The Riparian representatives detailed their top five issues of concern

Dept.: The revision is an opportunity to think outside the box and an opportunity to innovate and move beyond the thinking of “my county does it this way or that”. The main message is to have this revision process help people understand that any action on property that abuts water will have an impact on water.

#### **Land division**

- Division of land: Protect property owners by fulfilling our responsibility to make sure people know what size lot can be built upon, so people don’t end up investing in property where a home cannot be sited (if that is their intention). Use the plat review process.

#### **Lot size**

- Support: Minimum lot sizes and keyhole development. Although “keyhole” properties were not discussed explicitly in the proposed revision (instead discussed through issue of “access”), the term and concept were raised in comments.
- Opposition: lot width measurement
- Comments: campgrounds need more clarity/flexibility

#### **Vegetative buffers**

- Especially surprised by wetland-buffer comments
- Support: vegetation plans, wetland buffer
- Opposition: vegetation plans
- Comments: ban on fertilizer, administration and enforcement of vegetation provision (individual comments rather than from county level), minimal number of comments on nuisance species that may accompany vegetation buffers

Karl: Notes 9000 comments pro-buffer. Were there any comments in opposition?

Dept.: Yes, 17 opposed on the grounds of the vegetation plan and the challenges of tracking/enforcement.

#### **Impervious surface**

- Support: Discussion on the need for caps (for IS on a lot), but opinions varied on the extent of the cap (limits supported ranged from 10 to 20%)
- Opposition: opposed to trigger for re-vegetation, but not certain these opposing views extended to overall opposition to IS standard.

Size of home:

Brown County says they won’t enforce such an IS standard because they have nowhere to put the runoff now, especially that of homes along Bay of Green Bay.

Karl & Pam: Aren’t there mechanical solutions that Brown County could use? Haven’t they accounted for space needed in their storm sewers?

Earl: Will there be opportunity to raise some issues again that are not covered by the IS or Mitigation standards?

Dept.: These issues will be further debated within the DNR based upon the first public comment draft. We have already debated them in previous AC meetings; unless someone feels a strong need to readdress an issue. We can review select issues after the second draft and before we take the new revision out for public comment again in 2007.

## **General comments from AC:**

### **Buffer issue**

Jay: Knowing whether comments about buffers came from riparian owners or otherwise would give us an idea of how much weight to give the comment.

Dept.: Although riparian property owners have vested financial interests, the public and habitat have equal voice.

Jay: From the perspective of a County Board Supervisor, if state wants a buffer, don't charge the taxpayers who live there for it. State should pay for it. In Arkansas, the state owns all shoreland. In Wisconsin, the shorelands are deeded to property owners. Need to consider monetary value involved in regulating people. Can the DNR first pay for the shoreland?

Dept.: Riparian owners enjoy a privilege living there. Technical support, grants, incentives have all been discussed in the comments as options for financial relief. However, there were no comments suggesting transfer-of-development rights (TODs) or easements. And, many property owners did attend the hearings and submitted comments. Their comments have influenced our thinking about what is best for the resource and for owners. For example, an elderly man (from Hayward?) commented that if he can't afford to fix or move his non-conforming structure, he may just need to sell the property that currently has a "smaller" cottage on it and move to a condo; meanwhile a person might purchase the property, tear down the cottage and build a much larger dwelling, resulting in greater impacts (construction and greater impervious surface coverage) to the water resource.

Nancy: Property owners are not necessarily in favor of less regulation. They want to preserve the lakes. We were surprised at the lack of opposition to the proposed changes.

Dept.: All owners move to the waterfront for something they are passionate about. Southern counties are realizing their problems (resource degradation) and want to change and will pay large amounts to bring about that change. Northern Wisconsin is more resistant to change, perhaps, believing that over-development won't extend north of Highway 29.

Pam: Counties need flexibility. I am concerned about the IS and Mitigation standards' equal protection under the law. No set standard will fit the entire state. Mitigation up north equals no mow, where in the south it equals fancy native landscaping. Northerners are not dumb and do take well to education efforts. Do not take responsibility away from people and don't dicker with owners.

Dept.: It is difficult to speak to all owners.

Elmer: Not the case that all owners have this "instinctual" knowledge of how to care for shorelands. Our new neighbors from Illinois have no idea.

Jay: We can't hire folks for check how plans are being implemented. Need front-side mechanisms. We try to sit down with each new shoreland owner and discuss how to develop responsibly, but can't afford to this with each new owner.

(Is this something a lake association could take on as volunteers?)

## **Introduce Focus Groups and discuss AC membership**

(Hand out NR 115 Focus Group Fact Sheet)

Through the focus groups, other issues of concern will be addressed.

Impervious surface addresses issues of setbacks, definitions, etc. Mitigation addresses issues of erosion control, vegetation, triggers, etc. The goal is to address old issues with new concepts. Need more ground-truthed,

**Russ and Toni**

flexible, landscape specific standards. We will consider how to account for non-conforming uses while addressing additional volumes of pollutants.

Jay: Will the IS standard be written differently for the various soil types that differ around the state?

Dept.: There are over 700 soil types in Wisconsin, so we may have to group them somewhat.

Pam: Could have a rating based on the professional soil surveys that are performed when new developments are commenced—a good starting point.

Lori: We will have to pay attention to the overlap between the IS and Mitigation standards/issues.

Karl: Will the IS and Mitigation standards apply only in the 1,000 or 300 foot shoreland zones?

Dept.: Depends on focus groups discussion, the authority exists for the full 1,000 feet from a lake, pond or flowage and 300 feet from a river. We have the option to bring the focus groups together again before going to the deciding AC meeting to iron out these issues. Technical professionals (scientists, landscape architects) should also be encouraged to either participate in or consult the focus groups. We ask you to suggest others you feel would be good members of these focus groups.

(Review of Focus Group guidelines)

Jay: Will the two groups reconvene to discuss the Implementation/Enforcement later?

Dept.: Gregg and Toni will send out summaries of both groups' progress and findings to the entire AC so all are on the same page. And, there might need to be some dialogue between groups during the process.

Nancy: Has DNR considered a state wide process for lake classification and having a specific standard for each class? This would provide consistency within each class.

Dept.: The legislation started this way, but got boiled down to an optional county classification. Process became too cumbersome from the legislative perspective and it would need statutory authority to be implemented.

Mark: And, remember that rivers and streams would need to be likewise classified.

Nancy: On Lake Geneva, in the off season, piers are pulled onshore and stored within the 35 foot zone. How would this be affected?

### **Focus Group 1: Mitigation – discuss goals and desired results**

**Greg Breese**

(Handout “Summary of Mitigation”)

Suggest changing the term “mitigation” to some other term that doesn’t carry any presupposed meaning. Focus group’s charge is to answer the questions:

1. How to achieve performance standards for mitigation standard that has specificity for each water body within county rules? (40% of focus)
2. How to create a system that assures all specifications meet the performance standards over time? (60% of focus)

Tom L.: What are the mechanics of the focus group? How will they work?

John L.: Who will facilitate? At the county level, we used the Regional Planning Commission and UW-EX to facilitate. They were very helpful.

Dept.: It will be somewhat of an art. First, isolate the questions to be answered or addressed. Use charets or whatever mechanism works for the dynamics of the groups. One person will be responsible for note-taking and another for facilitation. May hire a facilitator so Toni and/or Gregg can participate. Gregg intends to facilitate the Mitigation group.

Marc: Are you looking for a set of various ideas or options? Or for one idea that we agree on?

Dept.: Perhaps a list of five to ten ideas, but prioritized. Or, when we reconvene as an AC, have a list of three “#1s” with one preferred choice and reasoning why that is the primary choice. Feel free to use examples or ideas from other counties or states where ideas have been implemented.

Lori: Will the focus group members be expected to conduct research and organize our thoughts before the focus group meetings?

Dept.: Yes.

Nancy: Do you have examples of performance standards for shoreland management?

Dept.: None that have stood out yet. Group members need to determine the level of resource measurement: on a spectrum, are we striving for resource improvement or sustain resource degradation? The Lower St. Croix uses visual or scenic based performance standards.

Karl: Are we looking for subjective criteria or a code-compliant system?

Nancy: Don’t we already have this with our sanitary codes?

Dept.: Keep an open mind with this process. Each option may not result in a black-and-white perfect idea. Also, from a structural standpoint, not every fine detail needs to be written into the code. For example, NR 151 references a Technical Matrix to be used. According to changes or differences in soils, water chemistry, etc. by location, the matrix guides which standard to apply. This system allows for new science and information to be incorporated when pertinent. We can also look outside the U.S. for mitigation ideas, i.e. Germany’s Green Tier program.

## **Focus Group 2: Impervious Surface – goals and desired results**

**Toni Herkert**

(Handout “Impervious Surface—Take 2”)

Main goal here is to balance property owners’ personal desires for their properties with the long-term management of water resources. This standard will put the DNR back in the business of resource protection and out of zoning. We would like to have the standard focus on where a structure is built and connecting this information with how the location impacts the resource AND then detail how to address this impact. Then we won’t have to worry about structures not-conforming, rather how much impervious surface it is covering and how to mitigate that impact.

Jay: When are the meetings?

Dept.: Mitigation is tentatively scheduled for July 18<sup>th</sup> and the Impervious surface group is tentatively scheduled for August 3<sup>rd</sup> and August 17<sup>th</sup>. The meetings will be centrally located based on the composition of membership in each group.

Nancy: The third week of any month is bad for county representatives; all meetings occur then. Also, with the performance standards, will they address what is going into the lakes?

Dept.: OK, How about the 3<sup>rd</sup> and 31st for Impervious surfaces - The DNR will bring some baseline ideas that the focus group can react to and either build upon or change completely; many ideas will be solicited. The baseline ideas will be circulated among the group prior to the meetings. Need to also develop diagrams to help the public visualize the standards. Will the term “impervious surface” be defined by the groups or by the DNR? We are close to having a definition for IS. But we may have either a definite definition or one that allows for specifications of an area/county.

### **Closing Remarks and Questions**

All AC members should first read through the full comments as presented in the database and think about which should be addressed by the focus groups. Outline common-interest issues.

Karl: Are coastal waters under the authority of the DNR and these new standards?

Dept.: Shoreland zoning is the same on coastal waters as for inland waters, but they do get more complex with the International Joint Commission and Areas of Concern designations. We might be able to fashion Great Lakes specific waters similar to the St. Croix Scenic River (NR 118). In Ashland, on July 20-21, the Coastal Issues Conference will be held and a wide array of organizations will participate: WI Association of Floodplain Engineers, FEMA, Army Corps of Engineers, etc. All individuals may sign up for a group today, or email Toni with their choice/s. Toni will later email the entire focus groups with logistics for the meetings. Also, the AC list will be updated and distributed.